



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 7, 2010

CBCA 2073-TRAV

In the Matter of ROBERT B. BARNES

Robert B. Barnes, Fallbrook, CA, Claimant.

Diane Foose, Office of the Principal Legal Advisor, United States Immigration and Customs Enforcement, Department of Homeland Security, Washington, DC, appearing for Department of Homeland Security.

SHERIDAN, Board Judge.

Claimant, Robert B. Barnes, a civilian employee of the Department of Homeland Security, Immigration and Customs Enforcement (ICE or agency), contests the agency's refusal to reimburse him \$40 for baggage fees. We conclude that the \$40 is reimbursable because the baggage fees were included in claimant's upgraded ticket which he purchased at personal expense.

Background

On September 29, 2009, claimant traveled on official business from San Diego, California, to Boston, Massachusetts, returning to San Diego on October 2, 2009. The agency authorized claimant coach-class tickets. Prior to departure, at his personal expense, claimant upgraded both his departure and return coach-class to first-class tickets. The upgrade required claimant to pay 15,000 miles against his frequent flyer account, as well as an extra \$300 for both flights.

One of the benefits of the first-class accommodation was that claimant was not required to pay a checked bag fee, whereas, when flying with a coach-class ticket the passenger is charged \$20 for one piece of checked luggage. Claimant checked one piece of luggage on each of his departing and returning flights and was not charged baggage fees.

Upon returning from travel, claimant prepared a travel voucher in which he requested reimbursement for a coach-class ticket and \$40 for baggage fees. While claimant was reimbursed the cost of the coach-class ticket, the \$40 for baggage fees was denied. The agency asserts that the baggage fees were denied because claimant did not submit evidence that the expenses were actually incurred.

Discussion

By statute, the Government is required to reimburse employees for the “actual and necessary costs of official travel.” 5 U.S.C. § 5702(a)(1)(B) (2006). The Federal Travel Regulation (FTR), which applies in this matter, authorizes reimbursement of expenses related to checking baggage. 41 CFR 310-12.2 (2009). The FTR provides that employees may upgrade to other than coach-class accommodations, at their own personal expense. 41 CFR 301-10.123 n.1. Claimant upgraded to first-class accommodations at his own personal expense using frequent flyer miles and paying \$300 extra. However, claimant posits that the agency should reimburse him for the baggage fees he would have paid had he traveled on the agency-issued coach-class ticket.

The agency has not represented that baggage fees were included in the cost of the coach-class ticket it provided claimant. In calculating the amount of reimbursement due, the agency reimbursed claimant for the cost of the coach-class airfare; however, it denied claimant’s request for \$40 compensation for baggage fees. The thrust of the agency’s argument appears to be that claimant should be denied reimbursement of baggage fees because he did not “actually incur” baggage fee costs since baggage fees were included in the cost of the first-class ticket.

The general rule applicable to cases like this is that where an employee uses a personal voucher, coupon, or frequent flyer credits for official government travel, the Government may not reimburse the employee for the value of the personal voucher, coupon, or frequent flyer credits because there is no direct expense involved. Reimbursement has been denied because it is not possible, with any degree of certainty, to ascertain the amount of expense an employee actually incurs where the employee redeems frequent flyer miles or a coupon to obtain a ticket. *Richard J. Maillet*, GSBCA 16446-RELO, 05-1 BCA ¶ 32,910; *Lawrence Baranski*, GSBCA 15636-TRAV, 02-1 BCA ¶ 31,684 (2001). As the General Services Board of Contract Appeals explained:

The fundamental reason why reimbursement is not possible rests in the fact that, by law, “only *actual* and necessary travel expenses may be allowed to an individual holding employment or appointment under the United States.” 5 U.S.C. § 5706 (2000) (emphasis added). When transportation is secured with

frequent flyer credits, coupons, or vouchers, no direct expense is involved. Admittedly, there is value involved, but the determination of that value is itself a highly subjective process on which agreement is difficult if not impossible.

Maillet, 05-1 BCA at 163,039. Similarly, as noted in *Baranski*:

It has long been the case that Government travelers who have acquired airline tickets . . . by redemption of frequent flyer miles or coupons acquired on personal travel may not be reimbursed for the supposed value of the tickets because of: (1) the subjectivity that would be involved in ascertaining the value of frequent flyer miles or coupons, (2) the problems of control and accountability in allowing reimbursement for frequent flyer miles and coupons, and (3) the lack of guidance in statute and regulation on how to value such items. In other words, in the absence of specific statutory or regulatory guidance, it is not possible to conclude that an employee who redeemed frequent flyer miles or a coupon to obtain a ticket for Government travel actually incurred an expense, and it is not possible, with any certainty, to ascertain the amount of the expense.

Baranski, 02-1 BCA at 156,557 (citations omitted).

The instant matter is distinguished from *Maillet* and *Baranski* because in those cases there was no direct expenditure on the part of the employee. The employee in *Maillet* used frequent flyer credits to obtain tickets for himself, his wife, and his daughter and sought reimbursement for the value of the three tickets. The agency reimbursed the employee for \$65 in taxes, but reimbursement for the value of the tickets was ultimately denied because “reimbursements are based on official receipts and actual costs and not on the value of an item.” 05-1 BCA at 163,039. In *Baranski*, the employee used a voucher he received during personal travel and sought to recover the value of the ticket. The agency’s decision to deny reimbursement was found to be proper because claimant did not incur an expense.

The holdings in *Maillet* and *Baranski*, as well as the holdings in the cases upon which they rely, are based, in part, on circumstances where the employee incurred no out-of-pocket expense for the upgraded ticket. Here, however, we have claimant incurring out-of-pocket expenses in the amount of \$300 for the upgrade and a clear airline policy that claimant would have incurred \$40 in baggage fees had he traveled on the coach-class tickets. Claimant checked one piece of luggage each way, so it is a reasonable assumption that, had he traveled using the coach-class tickets, he would have incurred the \$40 in baggage fees. The agency would have reimbursed claimant for baggage fees incurred had he traveled on the coach-class tickets.

Technically speaking, claimant did not actually incur the expense of a coach-class ticket. He incurred the cost of a first-class ticket. However, the agency properly reimbursed claimant for the cost of a coach-class ticket. As the agency did with the coach-class airfare, the agency should reimburse claimant for the baggage fees. The baggage fees were not specifically broken out for the first-class tickets, as they were for the coach-class tickets, but claimant still incurred baggage fees that were subsumed in the cost of the upgraded first-class ticket. The fact that the fees were not set forth as an identifiable “additional charge” in the first-class ticket does not mean that baggage fees were not actually incurred. To conclude that no fees were actually incurred when claimant expended \$300 for a first-class ticket is not reasonable.

Using the baggage fees associated with coach-class tickets, we can reasonably ascertain that \$40 of the \$300 paid by claimant is attributable to baggage fees. It is not the intention of the FTR to penalize an employee for upgrading a ticket. Further, it is not the purpose of the regulation to provide the Government a \$40 windfall just because claimant upgraded to first class. Under the unique facts of this case, claimant is not recovering supposed value for a ticket for which he expended no funds.

Decision

Based on the foregoing analysis, claimant is entitled to \$40 for reimbursement of baggage fees.

PATRICIA J. SHERIDAN
Board Judge

In calculating the amount of reimbursement due claimant, the agency began appropriately by using a constructive cost approach to compensate the claimant for his airfare.¹ This approach was set forth in *Russell E. Yates* by the General Services Board of Contract Appeals, our predecessor in settling federal employee travel and relocation expense claims:

[The agency must] calculate the employee's travel costs in two separate ways. First the agency should determine, through the standard application of statute and regulation, the allowability of the various components of an employee's travel claim The agency should then total the allowable costs.

Second, the agency should determine the total constructive cost of the employee's travel had he or she traveled by the method of transportation deemed to be in the Government's best interest [C]onstructive costs are by their very nature not costs which are actually incurred. Although these costs, too, should be determined through application of statute and regulation, the calculation necessarily will involve assumptions. As with the employee's travel costs determined in standard fashion to be allowable, the agency should likewise calculate a total constructive cost.

After computing the two totals, the agency should compare them. If the total of costs determined in standard fashion to be allowable is greater than the total of the constructive costs, the agency should limit reimbursement to the latter figure.

GSBCA 15109-TRAV, 00-1 BCA ¶ 30,785, at 152,027.² The constructive cost so calculated constitutes the upper limit on recovery of actual costs incurred by the claimant for traveling on official duty. *Id.*

The computation of the constructive cost total is based on reasonable assumptions about what costs the employee would have incurred had he or she used the travel method

¹ The agency argues that the analysis for constructive costs of travel must be conducted prior to travel, but it used this approach to reimburse claimant for airfare.

² Although *Yates* involved travel to a temporary duty station by means of transportation other than that selected by the agency, the analysis used in *Yates* is appropriate to this case where claimant essentially changed his means of travel from commercial air carrier, coach-class to commercial air carrier, first-class.

deemed to be in the Government's best interest. *John L. Corrigan*, GSBCA No. 15707-TRAV, 02-2 BCA ¶ 32,001.

The fact the constructive cost of a trip may include certain costs does not automatically entitle an employee to be reimbursed for the constructive cost of the trip. An employee's claim "must contain requisite support for whatever reimbursement is sought. His allowable reimbursement is not based upon the constructive cost of travel; it is simply not permitted to exceed that figure." *Yates*, at 152,028, *quoted in Daniel G. Shelton*, CBCA 473-TRAV, 07-1 BCA ¶ 33,493.